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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,971	12/31/2001	Deanna R. Kathumbi-Jackson	17,697	9577

23556 7590 02/05/2004

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EXAMINER

REICHLE, KARIN M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 02/05/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/038,971

Applicant(s)

KATHUMBI-JACKSON ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10-11.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: page 13, line 4 would be in better form if after "(F)", --(see Figure 7)-- were inserted. In the paragraph bridging pages 14-15 and in the first full paragraph on page 15, all references to the inventors should be avoided. The description should be limited to a factual description of the invention.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. Claims 1-4 and 6-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, lines 4-7 and claim 6 are inconsistent with lines 7-8 of claim 1, i.e. if the length is no less than about 40 mm and the width is no less than about 5 mm(claim 1) or about 10 mm(claim 6) the surface area will be less than about 700 mm² which is inconsistent with lines 7-8 of claim 1, e.g. the width can be no less than about 14 mm for the surface area to be no less than about 700 mm².

Claim Language Interpretation

3. It is noted that while "labial pad" is defined on page 4, lines 20-23 that the claims are drawn to an "absorbent article". "Vestibule" is defined as set forth on page 4, lines 23-29 and

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page 5, lines 3-5. "Disposition...vestibule" is defined as set forth on page 4, lines 29-30, and page 5, lines 9-14 and page 6, lines 1-5. The various directional terms used in the claims are defined as set forth on page 5, lines 15-30. "Effective surface area" is defined as set forth on page 15, lines 18-21 but is not used in the claims.

Claim Rejections - 35 USC § 102

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1-4 and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Osborn, II et al '644.

The '644 device includes an absorbent article 20 having an absorbent 22 and 24 which includes superabsorbent polymer, see col. 7, line 33, col. 10, lines 43-44, col. 13, lines 15-18 and col. 15, lines 57-59, a length(L or x), a width(Z), an upper surface with a surface area, see Figures 1, 4, 8-10, col. 5, line 66-col. 6, line 14, col. 6, lines 37-41 and 56-57, col. 8, lines 43-46 and 63-64, col. 8, line 67-col. 9, line 6, col. 9, lines 41-56 and col. 13, lines 1-14, and definitions supra, i.e. the dimensions of the absorbent are those of elements 22 and 26 since they can be unitary, the specific lengths, widths, and thus surface areas are disclosed at col. 6, lines 37-49 and 56-59, the paragraph bridging cols. 8-9. The absorbent article appears to be configured for disposition within the vestibule as claimed in claim 1, see definitions supra and Osborn '644, i.e. definition of "absorbent interlabial structure" at col. 4, line 64-col. 5, line 25 and col. 6, lines 29-36. In any case, with regard to the functions, properties and capabilities set forth in claim 1, i.e. "configured...wearer", and "having...vestibule", see definitions above and note that the Osborn

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device includes the claimed structure. Therefore, there is sufficient factual basis for one to conclude that the functions, properties and capabilities of such claimed structure would also be inherent in the same structure of Osborn. See MPEP 2112.01.

Response to Arguments

6. Applicants remarks on pages 8-9 have been considered but are either not understood, i.e. no election of species has been required in this application, deemed moot in that the issue discussed has not been reraised or deemed not persuasive for the reasons set forth supra, i.e. all references to the inventors was not avoided.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action..


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The amendment to claim 1 necessitated any new grounds of rejection.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 308-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
February 3, 2004